HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION Nos.6803, 6807, 6808, 6809, 6810 AND 6812 OF 2007

WRIT PETITION No. 6803 OF 2007

Between:

Y. Hima Bindu

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6807 OF 2007

Between:

C. Chandra Sekhar

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6808 OF 2007

Between:

K. Abhishek Reddy

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6809 OF 2007

Between:

K. Harish Reddy

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6810 OF 2007

Between:

Moushmi Mahato

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6812 OF 2007

Between:

K. Dharma Reddy

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

: COMMON ORDER :

Counsel for the petitioners : Shri D. Prakash Reddy,

Senior Advocate assisted by
Shri Harender
Pershad

Counsel for respondent No.1 : Shri P. Radhakrishna

Counsel for respondent No.2 : Shri G. Vidyasagar

Counsel for respondent No.3 : Smt. Kalpana Ekbote

July 17, 2007

Per G.S.SINGHVI, CJ

The above noted writ petitions have been filed by the purchasers/occupiers of building known as VRN Sadan for quashing final notices dated 15-2-2007 issued by Commissioner, Malkajgiri Municipality, Ranga Reddy District for removing the alleged setback violations.

The prayer of the petitioners is founded on the assertion that at the time of purchase of different portions of VRN Sadan from its owner and builder Shri A. Venkateswarlu (respondent No.2 herein), they did not know of any setback violation. According to them, the builder constructed the apartments on Plot No. 632, Survey No. 218/1 of Defence Colony, Malkajgiri Municipality (for short, 'the Municipality') and they purchased different portions under registered sale deeds; that even though the impugned notice makes a reference to provisional order dated 2-1-2004 issued under Sections 228 (1) and (2) of Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act') and confirmation order dated

12-1-2004 issued under Section 228 (3) of the Act, no show cause

notice and opportunity of hearing was given to them; that the alleged violations made by the builder are within the permissible limits and that they cannot be deprived of their property without following the procedure established by law and without complying with the rules of natural justice.

In the counter-affidavit filed by him, Shri D. John Samson, Commissioner, Malkajgiri Municipality has averred as under:

(i) that, respondent No.2 Shri A. Venkateswarlu applied for permission for construction of apartments in Plot No. 632, Survey No. 218/1, Defence Colony;

(ii) that he granted permission for ground + two vide proceedings No. G2/801/1998, dated 9-10-2003 for the construction of residential apartments;

(iii) that provisional order dated 2-1-2004 was issued under Section 228 (1) and (2) of the Act and confirmation order dated 12-1-2004 was issued under Section 228 (3) of the Act requiring the builder to remove the violations;

(iv) that provisional order was served on the watchman of the builder viz., Shri B. Yellaiah, but the builder did not respond to the notice and, therefore, confirmation order was issued on 12-1-2004.

According to Shri Samson, the petitioners had purchased apartments after issue of confirmation order under Section 228 (3) of the Act and, therefore, it was not necessary to issue notices to them.

In paragraph 3 of the counter affidavit filed by him, the builder Shri A. Venkateswarlu has averred as under:

> "4. I respectfully submit that the Notice dated 15-2-2007 served on the Petitioner was not communicated to this Respondent. The final Notice dated 15-2-2007 refers to the provisional Order dated 2-1-2004 issued under Section 228 (1) & (2) of APM Act, 1965 and confirmation order dated 12-1-2004 issued under Section 228 (3) of the Act and also Judgment dated 22-1-2007

in W.P.No. 879/05. In this regard, it is submitted that the provisional order dated 2-1-2004 or the confirmation order dated 12-1-2004 are not served on me to the best of my knowledge. The building was completed in the month of December, 2004 and possession was handed over to the purchasers. After 3 years, the final order dated 15-2-2007 was issued without referring to the specific set back of violations. The final notice do not refer to any opportunity was given to the occupiers of the building or to the developers who have constructed the building. Hence, the final notice is contrary to law and in violation of principles of natural justice."

We have heard learned counsel for the parties and carefully scrutinized the record. The notice issued to one of the petitioners, namely, Ms. Y. Hima Bindu (petitioner in Writ Petition No.6803 of 2007) reads as under:

"**OFFICE OF THE MUNICIPAL COUNCIL MALKAJGIRI**
RANGA REDDY DISTRICT

FINAL NOTICE

Lr.No.G2/226/2005 **Dt.15.02.2007**

Sub: Malkajgiri Municipality – Illegal Constructions in Defence Colony-W.P.879 of 2005 on the file of Hon'ble High Court filed by O.Yella Reddy – Notice issued as per the orders of Hon'ble High Court – regarding.

Ref: 1. This Office Provisional Order, dated 2-1-2004 issued under section 228 (1) & (2) of APM Act 1965.
2. This Office Confirmation Order, dated 12-1-2004 issued under section 228 (3) of APM Act, 1965.
3. Judgment of Hon'ble High Court in W.P.No.879 of 2005, dated: 22-01-2007.

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Please take notice that, you have constructed residential apartments in Plot No. 632, Sy.No.218/1 of Defence Colony Malkajgiri by deviating to the Technically approved plan by HUDA vide Lr.No.--, Dt.-- and this office Proceeding No. G2/801/2003, dt. 9-10-2003 i.e. set back violations.

As per the Judgment of the Hon'ble High Court in W.P.No.879 of 2005, you are hereby directed to remove the set back violations voluntarily within a period of one month from the date of receipt of this notice, failing which the same violations will be removed departmentally.

Commissioner
Malkajgiri Municipality

To
Sri Y. Hima Bindu, Flat No. G2,
Plot No. 632, VRN Sadan,
Sy.No.218/1,
Defence Colony,
Malkajgiri."

In the context of the statement contained in the above reproduced notice and the averments contained in the affidavit of respondent No.2, we asked Shri P. Radhakrishna, learned counsel for the Municipality to show that provisional and confirmation orders passed on 2-1-2004 and 12-1-2004 respectively were served on the said respondent in accordance with Section 353 of the Act. In reply, learned counsel fairly stated that the records made available to him do not show that either of the two orders was tendered to respondent No.2 or that the alternative mode was adopted, because respondent No.2 was not found at the given address. He, however, submitted that service of notice on the watchman of the building, Shri B. Yellaiah should be treated as sufficient for the purpose of taking action to remove the violations made at the time of construction of the building.

In our opinion, there is no merit in the submission of the learned counsel for the Municipality. Section 353 of the Act, which prescribes method of serving documents etc., reads as under:

"**353. Method of serving documents :--** (1) When any notice, or other documents is required by this Act or by any rule, bye-law, regulation or order made under it, is to be served on or sent to any person, the service or sending thereof may be effected—

(a) by giving or tendering the said document to such person; or

(b) if such person is not found, by leaving such document at his last known place of abode or business or by giving or tendering the same to some adult member or servant of his family; or

(c) if such person does not reside in the municipality and his address elsewhere is known to the Commissioner by sending the same to him by post registered; or

(d) if none of the means aforesaid be available, by fixing the same in some conspicuous part of such place of abode or business.

(2) Where the person is an owner or occupier of any building or land, it shall not be necessary to name the owner or occupier in the notice or document,

and in the case of joint owners and occupiers it shall be sufficient to serve it on, or sent it to, one of such owners or occupiers.

(3) Whenever in any bill, notice, form or other document, served or sent under this Act, a period is fixed within which any tax or other sum is to be paid or any work executed or anything provided, such period shall save as otherwise provided in this Act, be calculated from the date of such service or sending."

A bare reading of the above reproduced provision makes it clear that the notice required to be given under Section 228 (1) and (2) of the Act has to be tendered to the affected person. The alternative mode envisaged in clauses (b), (c) and (d) of sub-section (1) of Section 353 can be resorted to only if the person to whom the notice is addressed is not found or does not reside in the municipality or the notice cannot be served in accordance with clauses (b) or (c).

In the present case, the provisional order issued under Section 228 (1) and (2) and confirmation order issued under Section 228 (3) are not shown to have been tendered to the builder i.e., respondent No. 2. Therefore, the same cannot be treated as served on the said respondent.

As a sequel to the above, it must be held that notices dated 15.2.2007 issued to the petitioners for removing the violations on the assumption that the builder had not done so despite service of provisional and confirmation orders cannot be sustained.

In the result, the writ petitions are allowed and the impugned notices are quashed. However, with a view to avoid unnecessary litigation on the ground of violation of the procedural aspect or the rules of natural justice, we deem it proper to issue the following directions:

1) The petitioners and respondent No.2 will be deemed to have been put on notice regarding violations of the sanctioned plan.

2) Within one month from today, the petitioners and respondent

No.2 may submit their written objections/ representations against the proposed removal of violations. They shall submit their representations to Deputy Commissioner, Greater Hyderabad Municipal Corporation, Malkajgiri Circle (this is being done because Malkajgiri Municipality has merged in Greater Hyderabad Municipal Corporation).

3) Within next six weeks, the competent authority shall hear the petitioners and respondent No.2 or their authorized representatives, wherever a written request for hearing is made, consider the representations/objections and pass speaking orders in the matter of removal of the violations or otherwise.

4) If the competent authority comes to the conclusion that respondent No.2 has not violated the sanctioned plan, then the notices issued to the petitioners and respondent No.2 shall be dropped. If, on the other hand, the competent authority comes to the conclusion that the building has been constructed in violation of the sanctioned plan, then the final order be communicated to the petitioners and respondent No.2 and they be given reasonable time to remove the violations.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

July 17, 2007

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